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**U.S. District Court  
DISTRICT OF ARIZONA (Phoenix Division)  
CIVIL DOCKET FOR CASE #: 2:11-cv-00396-ROS  
Internal Use Only**

AutoEnginuity LLC v. Morris  
Assigned to: Chief Judge Roslyn O Silver  
Cause: 15:1125 Trademark Infringement (Lanham Act)

Date Filed: 03/02/2011  
Jury Demand: None  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

**Plaintiff**

**AutoEnginuity LLC**  
*an Arizona limited liability company*




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V.

**Defendant****Sean Morris**

*Trademark*  
*3,644,213*

Date Filed	#	Docket Text
03/02/2011	 <u>1</u>	COMPLAINT. Filing fee received: \$ 350.00, receipt number 0970-4963499, filed by AutoEnginuity LLC. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet)(Submitted by Jeffrey Johnson)(JRD) (Entered: 03/02/2011)
03/02/2011	 <u>2</u>	Corporate Disclosure Statement by AutoEnginuity LLC. (Submitted by Jeffrey Johnson) (JRD) (Entered: 03/02/2011)
03/02/2011	 <u>3</u>	Filing fee paid, receipt number 0970-4963499. This case has been assigned to

		the Honorable Roslyn O Silver. All future pleadings or documents should bear the correct case number: CV-11-396-PHX-ROS. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (JRD) (Entered: 03/02/2011)
03/02/2011	● <u>4</u>	SUMMONS Submitted by AutoEnginuity LLC. (Submitted by Jeffrey Johnson) (JRD) (Entered: 03/02/2011)
03/02/2011	● <u>5</u>	Summons Issued as to Sean Morris. (JRD). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 03/02/2011)

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11 UNITED STATES DISTRICT COURT  
12 DISTRICT OF ARIZONA

13 AUTOENGINEUITY, LLC,  
14 an Arizona limited liability company,

15 Plaintiff

16 v.

17 Sean Morris, an individual,

18 Defendant.

Case No.

**COMPLAINT SEEKING  
INJUNCTIVE AND MONETARY  
RELIEF FOR TRADEMARK  
INFRINGEMENT, FALSE  
DESIGNATION OF ORIGIN AND  
CYBERSQUATTING**

19  
20 Plaintiff AUTOENGINEUITY, LLC (hereinafter "AutoEnginuity"), for its  
21 complaint against defendant Sean Morris (hereinafter "Defendant"), by and through  
22 undersigned counsel, alleges as follows:

23 **OVERVIEW**

24  
25 1. AutoEnginuity owns the federally registered mark AUTOENGINEUITY,  
has rights, including common law rights, in the trademark, service mark, and trade

1 name AUTOENGINEUITY (collectively “the AUTOENGINEUITY Marks”), and has  
2 continuously used the AUTOENGINEUITY Marks in connection with its business as a  
3 designer, producer, and provider of automotive diagnostic tool hardware and software  
4 since February of 2002.

5           2. Defendant sells and markets automotive diagnostic tool hardware and  
6 software through various websites.

7           3. In connection with its sale and marketing of automotive diagnostic tool  
8 hardware and software, Defendant uses and has used the AUTOENGINEUITY Marks in  
9 commerce, including as URLs [www.autoenginuity.net](http://www.autoenginuity.net),  
10 [www.autoenginuityscantool.com](http://www.autoenginuityscantool.com) (hereinafter “the Accused Domain Names” or “the  
11 Accused Websites”) and in the content contained in and on its websites  
12 [www.autoenginuity.net](http://www.autoenginuity.net), [autoenginuityscantool.com](http://autoenginuityscantool.com), [61-autoscan.com](http://61-autoscan.com), and  
13 [autoscommunity.cloudaccess.net](http://autoscommunity.cloudaccess.net) (collectively “the Defendant’s Websites”).  
14

15           4. Defendant’s use of the AUTOENGINEUITY Marks is a bait-and-switch  
16 scheme, luring customers interested in purchasing genuine AutoEnginuity products  
17 from AutoEnginuity to purchase illegitimate products, including illegal copies of  
18 Plaintiff’s software, from Defendant.

19           5. Defendant further falsely represents to purchasers of its products that they  
20 are purchasing the products from AutoEnginuity, when in fact they are not.

21           6. Defendant’s unauthorized use of the AUTOENGINEUITY Marks creates  
22 obvious confusion for consumers. The unauthorized use of the AUTOENGINEUITY  
23 Marks diverts AutoEnginuity’s clients away from AutoEnginuity and its website to  
24 Defendant and Defendant’s websites, damages the reputation associated with the  
25 AUTOENGINEUITY Marks, including by providing pirated software in conjunction

1 with the products sold by Defendant, confuses customers into believing that in dealing  
2 with Defendant, they are in fact dealing with AutoEnginuity, and harms  
3 AutoEnginuity's profitability by forcing it to provide service and support for products  
4 using pirated software sold by Defendant.

5         7. Defendant's infringement of the AUTOENGINUITY Marks further  
6 unfairly allows Defendant to profit as a result of AutoEnginuity's national and  
7 international success with the AUTOENGINUITY Marks and products sold in  
8 conjunction with those marks.

9         8. In connection with marketing its goods and services, Defendant also  
10 makes false and misleading descriptions and representations of fact regarding the nature  
11 and source of the products being sold, both by representing to consumers that it is the  
12 Plaintiff, AutoEnginuity, and by representing that pirated software it sells is legitimate  
13 software.

14         9. On December 15, 2010, AutoEnginuity sent an email to Defendant  
15 demanding that it cease and desist from all unlawful use of Plaintiff's  
16 AUTOENGINUITY Marks and assign www.autoenginuity.net to Plaintiff. Defendant  
17 responded to that email, but has not complied with Plaintiff's demands.

18         10. On December 14, 2010, AutoEnginuity sent an email to  
19 wildwestdomains.com demanding that it disable access to certain materials on  
20 autoenginuity.net that were posted on that site in violation of AutoEnginuity's  
21 copyrights.

22         11. Subsequent to the December 14, 2010 email to wildwestdomains.com,  
23 wildwestdomains.com disabled access to the certain content on autoenginuity.net.  
24  
25

1           12.     Subsequent to the disabling on the infringing content on  
2 autoenginuity.net, Defendant caused the website autoenginuity.net to resolve to the web  
3 page 61-AUTOSCAN.COM, which is a site on which Defendant encouraged visitors to  
4 download pirated copies of AutoEnginuity's software using a torrent download site.

5           13.     Sometime in February, 2011, Defendant further caused the URLs  
6 autoenginuity.net, autoenginuityscantool.com, and 61-autoscan.com, to resolve to the  
7 website autoscommunity.cloudaccess.net, a site on which Defendant features products  
8 that compete with Plaintiff's products.

9           14.     Plaintiff seeks monetary and injunctive relief pursuant to its claims arising  
10 out of Defendant's cybersquatting and willful infringement and fraudulent use of  
11 Plaintiff's AUTOENGINUITY Marks, including Plaintiff's federally registered  
12 trademark "AUTOENGINUITY", U.S. Trademark Reg. #3644213 (Attached hereto as  
13 Exhibit A, and hereinafter referred to as the "Mark").

14  
15                                 **PARTIES**

16           15.     AutoEnginuity is an Arizona Limited Liability Company with its principal  
17 place of business located at 3715 E. Palm Street, Mesa, AZ 85215. AutoEnginuity  
18 designs and sells automotive diagnostic tool hardware and software. AutoEnginuity is  
19 the exclusive owner of trademark rights, the AUTOENGINUITY Marks, on which the  
20 claims of relief asserted herein are based.

21           16.     Upon information and belief, Defendant Sean Morris is an individual  
22 residing at 53 Palamino, Boca Raton, FL, 33487.

23           17.     Defendant sells automotive diagnostic tool hardware and software in  
24 competition with AutoEnginuity.  
25

1           18. Defendant does business in Arizona, including by entering into web  
2 hosting agreements on more than one occasion with an Arizona business, and including  
3 shipping products sold by Defendant from Arizona to Defendant's customers.

4                                   **JURISDICTION AND VENUE**

5           19. This is an action for cybersquatting arising under 15 U.S.C. § 1125(d),  
6 trademark infringement arising under 15 U.S.C. § 1114(1), and false designation of  
7 origin arising under 15 U.S.C. § 1125(a).

8           20. This Court has subject matter jurisdiction over the claims pursuant to 15  
9 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

10           21. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a  
11 substantial part of the events giving rise to the claim occurred in this District, and  
12 Defendants transact business in this District, including registering and using the  
13 infringing domain names in this District.

14           22. This Court has personal jurisdiction over Defendant pursuant to the  
15 provisions of the Arizona's long arm statute, Rule 4.2(a), *Ariz. R. Civ. P.*, and the laws  
16 of the United States. Defendant has purposefully availed itself of the benefits and  
17 protections of Arizona law by doing business in Arizona, including registering and  
18 using the infringing domain names and hosting its websites in Arizona. Furthermore,  
19 Defendant has purposefully directed its conduct toward Plaintiff in Arizona by, among  
20 other things, shipping product sold by Defendant under Plaintiff's name and using  
21 Plaintiff's Arizona return address. In addition, Defendant's actions as described herein  
22 have caused and will continue to cause injury to Plaintiff, a resident of the State, and, if  
23 not enjoined, will permit Defendant to wrongfully derive revenue from Defendant's  
24 activities within this State.  
25

**ALLEGATIONS**

**Plaintiff's Business and Marks**

23. Plaintiff AutoEnginuity is a leading designer, manufacturer and seller of automotive diagnostic tools, including both hardware and software.

24. AutoEnginuity solicits and receives customer orders for its products internationally through various means, including via the internet at its websites www.autoenginuity.com.

25. In or about February 11, 2002, AutoEnginuity created, adopted and commenced use of the AUTOENGINUIT Y Marks, and has continuously used the AUTOENGINUIT Y Marks in interstate commerce since that date.

26. As a result of the time, effort and money invested in its business, AutoEnginuity has achieved a reputation for excellence in the design, manufacture and sale of its automotive diagnostic tools and associated hardware and software.

27. As a result of its reputation for excellence, AutoEnginuity enjoys substantial demand for, and sales of, its products and services both to end users and automotive original equipment manufacturers.

28. Together with its reputation for excellence, AutoEnginuity enjoys tremendous goodwill in its AUTOENGINUIT Y Marks.

29. The AUTOENGINUIT Y Marks have been extensively used by AutoEnginuity in United States interstate commerce in connection with advertising and promoting AutoEnginuity's products and services on AutoEnginuity's website on the internet at www.autoenginuity.com and in other publications and advertising.



1           30.    The AUTOENGINEUITY Marks are prominently presented on  
2 AutoEnginuity's website, computer systems, advertisements, product packaging,  
3 manuals, and technical and informational literature.

4           31.    The AUTOENGINEUITY Marks have been extensively and continually  
5 advertised and promoted by AutoEnginuity within the United States for the past nine  
6 years.

7           32.    Substantial amounts of time, effort and money have been expended over  
8 the years in ensuring that the purchasing public associates the AUTOENGINEUITY  
9 Marks exclusively with AutoEnginuity.

10           33.    Since at least as early as 2002, AutoEnginuity has operated its website  
11 available at www.autoenginuity.com. AutoEnginuity's website is an important resource  
12 used constantly by the general public, receiving hundreds of "hits" or visits each day.  
13 AutoEnginuity spends tens of thousands of dollars each year operating and maintaining  
14 its website. Moreover, AutoEnginuity spends hundreds of thousands of dollars each  
15 year promoting and advertising its website, products and services under the  
16 AUTOENGINEUITY Marks.

17           34.    The AUTOENGINEUITY Marks are widely known and recognized among  
18 consumers and members of the automotive scan tool industry in the United States.

19           35.    The AUTOENGINEUITY Marks are unique and distinctive and, as such,  
20 designate a single source of origin.

21           36.    As a result of AutoEnginuity's extensive and exclusive use, the  
22 AUTOENGINEUITY Marks have developed extensive goodwill in the automotive scan  
23 tool market, and are extremely valuable to AutoEnginuity.  
24  
25

1           37. AutoEnginuity expends substantial effort and expense to protect the  
2 AUTOENGINUITTY Marks and the AUTOENGINUITTY Marks' distinctiveness in the  
3 marketplace.

4           38. By virtue of the extensive scope of the sales made and the substantial  
5 sums spent to advertise and promote products and services under the  
6 AUTOENGINUITTY Marks, such marks have acquired strong secondary  
7 meaning in the minds of the purchasing public and the business community, and are  
8 highly distinctive, and serve uniquely to identify AutoEnginuity products and services.

9           39. Through widespread and favorable public acceptance and recognition,  
10 these marks have become assets of incalculable value as symbols of AutoEnginuity  
11 products and services.

12           40. Having been promoted to the general public, and having exclusively  
13 identified AutoEnginuity and its products and services, the AUTOENGINUITTY Marks  
14 symbolize the tremendous goodwill associated with AutoEnginuity and are a property  
15 right of incalculable value.

16           41. The AUTOENGINUITTY Marks are valid and enforceable trademarks.

17           42. AutoEnginuity is the owner of the following registration on the Principal  
18 Trademark Register of the United States Patent and Trademark Office: 3,644,213. A  
19 copy of the registration certificate is attached as Exhibit A.

20           43. The above-listed registration is valid, subsisting, and in full force and  
21 effect.

22  
23 **Defendant's Business**

24           44. Upon information and belief, Defendant is engaged in the business of  
25 selling automotive-related hardware and software, including automotive scan tools.

1           45. Defendant uses and has used various websites, including the Defendant's  
2 Websites, as a means of promoting products, advertising products and selling products,  
3 including automotive scan tool hardware and software, in interstate commerce.

4           46. Defendant uses and has used various websites, including the Defendant's  
5 Websites to transact business in interstate commerce, including taking and fulfilling  
6 orders for automotive-related hardware and software, including automotive scan tools.

7           47. Upon information and belief, Defendant ships products to multiple states  
8 within the United States.

9           48. Upon information and belief, Defendant receives payments for products  
10 from customers in multiple states within the United States.

11           49. Defendant has represented to customers that Defendant's business is  
12 located in the state of Arizona.

13           50. Defendant has represented to customers that products purchased from  
14 Defendant's business were shipped from Arizona.

15           51. Defendant is the registrant for the domain name autoenginuity.net (see  
16 attached Exhibit B).

17           52. Upon information and belief, Defendant registered autoenginuity.net at  
18 least as early as December, 2010 (see attached Exhibit B).

19           53. Defendant is the registrant for the domain name  
20 autoenginuityscantool.com (see attached Exhibit C).

21           54. Defendant registered autoenginuityscantool.com at least as early as  
22 March, 2010 (see attached Exhibit C).

1           55. Defendant is the registrant for the domain 61-AUTOSCAN.COM (see  
2 attached Exhibit D).

3           56. Defendant registered 61-AUTOSCAN.COM at least as early as  
4 December, 2010 (see attached Exhibit D).

5  
6 **Defendant's Concealment of Defendant's Identity**

7           57. Defendant employs various means to conceal Defendant's true identity  
8 and involvement in the use of Defendant's domain names, including by falsifying  
9 Defendant's address on products purchased from Defendant and shipped to customers  
10 (see attached Exhibit E).

11           58. Defendant has conducted business, or is conducting business, is holding  
12 itself out as, or has held itself out as, Plaintiff AutoEnginuity, by, for example, using  
13 email addresses on its websites that are confusingly similar to Plaintiff's  
14 AUTOENGINUITY Marks (see attached Exhibit F).

15 **Defendant's Unlawful Activity**

16           59. At least two of Defendant's domain names, the Accused Domain Names  
17 autoenginuity.net and autoenginuityscantool.com, are confusingly similar to Plaintiff's  
18 mark AutoEnginuity.

19           60. For commercial gain, Defendant uses the Accused Domain Names to  
20 divert Internet users searching for Plaintiff via Plaintiff's distinctive mark  
21 AutoEnginuity, to Defendant's Websites.

22           61. Defendant uses or used the Accused Domain Names as the domain names  
23 for the Accused Websites, which are websites that display or have displayed advertising  
24 and offer or have offered goods or services that are identical, directly competitive, or  
25

1 closely related to those sold or provided in connection with Plaintiff's distinctive mark  
2 AutoEnginuity.

3 62. Plaintiff has not authorized Defendant to use in any way, or register as  
4 part of any Internet domain name, any of the AUTOENGINUITTY Marks, the Accused  
5 Domain Names, or the Accused Websites.

6 63. Each of the Accused Domain Names is identical or confusingly similar to  
7 Plaintiff's AUTOENGINUITTY Marks.

8 64. Defendant uses the Accused Domain Names to attract users to the  
9 Accused Websites, on which it falsely holds itself out as, or has held itself out as,  
10 Plaintiff AutoEnginuity.

11 65. Defendant uses the Accused Domain Names to attract users to its Accused  
12 Websites and Defendant's Websites, on which it does or has encouraged potential  
13 customers to purchase software pirated and illegally copied from Plaintiff  
14 AutoEnginuity.

15 66. Defendant uses the Accused Domain Names to attract users to its Accused  
16 Websites and Defendant's Websites, on which products in direct competition with  
17 Plaintiff's products are featured.

18 67. Defendant, on the Accused Websites and through its interactions with its  
19 customers, falsely communicates to, or has falsely communicated to, purchasers and  
20 potential purchasers, that the software Defendant is offering is genuine, legal software,  
21 and that the purchasers are purchasing it from AutoEnginuity.

22 68. Defendant, on the Accused Websites and through its interactions with its  
23 customers, falsely communicates to customers, or has falsely communicated to  
24 customers, that they are dealing with AutoEnginuity, including by placing  
25

1 AutoEnginuity's Arizona address on the return address labels for products shipped by  
2 Defendant, even though Defendant's address is in Florida.

3 69. For example, in early December of 2010, Dave Cole, a customer located  
4 in Indiana seeking to purchase an AutoEnginuity scan tool, visited one of the Accused  
5 Websites hosted at one of the Accused Domain Names.

6 70. On December 5, 2010, as a result of his visit to one of the Accused  
7 Websites at one of the Accused Domain Names, Dave Cole purchased a scan tool from  
8 Defendant, using an eBay account associated with Dawn Knapp, listing Dawn's email  
9 as dawn0808@msn.com. See attached Exhibit G showing payment received from Dave  
10 Cole, Grabill IN, and listing 61autoscan as the Buyer's ID, with payment sent to  
11 sales@autoenginuity.com, and further listing Dawn Knapp as the source of the  
12 payment.

13 71. On December 5, 2010, Dave Cole received a confirming email regarding  
14 his purchase from Dawn Knapp at dawn0808@msn.com, indicating that the product  
15 would be shipped overnight on December 6, 2010, and asking Dave to reply for with his  
16 free activation request. See Exhibit H.

17 72. On December 7, 2010, Dave Cole received a package containing the  
18 product ordered by him on December 5, 2010 from Defendant. The return address on  
19 the package was AUTOENGINUITTY, L.L.C., 4808278665, 3715 E. PALM ST, MESA,  
20 AZ 85215. See attached Exhibit E.

21 73. Plaintiff's address is 3715 E. Palm Street, Mesa, Arizona, 85215, and  
22 Plaintiff's phone number is (480) 827-8665.

23 74. Plaintiff did not ship the above-referenced package to Dave Cole.  
24  
25

1           75.    The above-referenced package, including the falsified return address, was  
2 shipped by Defendant.

3           76.    On December 7, 2010, Dave Cole contacted Defendant via email  
4 requesting the code necessary to allow the product purchased from Defendant to work  
5 properly. See attached Exhibit I.

6           77.    On December 8, 2010, Defendant provided Dave Cole a fraudulent  
7 activation code for the product purchased from Defendant. See attached Exhibit I.

8           78.    On December 8, 2010, Dave Cole contacted Plaintiff for product support,  
9 believing, based on false representations of Defendant, that he had purchased his  
10 product from AutoEnginuity. See attached Exhibit I.

11           79.    On December 8, 2010, Plaintiff informed Dave Cole that he had in fact  
12 not purchased his product from Plaintiff, and that the activation code provided by  
13 Defendant was fraudulent.

14           80.    Subsequent to this conversation on December 8, 2010, Dave Cole  
15 undertook steps to recover the money he had paid to Defendant.

16           81.    Upon information and belief, Dave Cole has not recovered the money he  
17 has paid to Defendant.

18           82.    Subsequent to this conversation on December 8, 2010, Plaintiff undertook  
19 steps to stop Defendant's misuse of Plaintiffs AUTOENGINUTY Marks and the  
20 resulting confusion in the marketplace.

21           83.    Defendant has or does use the Accused Domain Names to redirect web  
22 users to Defendant's website 61-AUTOSCAN, in that attempts to access the Accused  
23 Domain Names have or do resolve to the website located at [www.61-autoscan.com](http://www.61-autoscan.com) (see  
24 Exhibit J).

1           84. Defendant, on its website 61-AUTOSCAN, has encouraged or does  
2 encourage visitors to download pirated copies of Plaintiff's software (see the bottom of  
3 attached Exhibit K).

4           85. Defendant, on the Accused Websites, does include, or has included,  
5 material in which Plaintiff owns both Trademark and Copyright, without Plaintiff's  
6 authorization or permission. (See, for example, attached Exhibit L, showing one of  
7 Plaintiff's web pages, and attached Exhibit M, showing a page at one of the Accused  
8 Domain Names, including material copied from Plaintiff's website.)

9           86. On information and belief, Defendant owns the website  
10 <http://autoscommunity.cloudaccess.net>.  
11

12           87. Defendant has or does use the Accused Domain Names to redirect web  
13 users to Defendant's website [autoscommunity.cloudaccess.net](http://autoscommunity.cloudaccess.net), in that attempts to access  
14 the Accused Domain Names have or do resolve to the website located at  
15 <http://autoscommunity.cloudaccess.net> (see Exhibit N).

16           88. Defendant's website [autoscommunity.cloudaccess.net](http://autoscommunity.cloudaccess.net) features scan tool  
17 products in direct competition with Plaintiff, and does not feature products marketed or  
18 sold by Plaintiff.

19           89. Defendant's use of the Accused Domain Names is a bait and switch  
20 designed to lure consumers seeking Plaintiff's products to Defendant's website  
21 [autoscommunity.cloudaccess.net](http://autoscommunity.cloudaccess.net), where they instead receive information regarding  
22 products that compete with Plaintiff's products.

23 **Harm to Plaintiff and the General Public**

24           90. Defendant's unauthorized registration and use of the Accused Domain  
25 Names is or was likely to cause, and has in fact caused, confusion, mistake, and  
deception as to the source or origin of its goods and services, and is or was likely to



1 falsely suggest, and has in fact falsely suggested, a sponsorship, connection, license or  
2 association of Defendant, Defendant's products, the Accused Domain Names, and the  
3 Accused Websites with Plaintiff.

4 91. Defendant's actions have irreparably harmed and, if not enjoined, will  
5 continue to irreparably harm the general public, which has an inherent interest in being  
6 free from confusion, mistake and deception.

7 92. Defendant's activities have irreparably harmed and, if not enjoined, will  
8 continue to irreparably harm Plaintiff and Plaintiff's AUTOENGINEUTY Marks.  
9

10 **FIRST CLAIM FOR RELIEF**

11 **(Trademark Infringement of Federally Registered Trademark No. 3,644,213 under**  
12 **15 U.S.C. § 1114(1))**

13 93. Plaintiff incorporates by reference all averments set forth in the  
14 paragraphs above as if fully rewritten herein.

15 94. Defendant's use in commerce of Plaintiff's AUTOENGINEUTY Marks  
16 and variations thereof is and was likely to cause confusion, mistake or to deceive.

17 95. Defendant's use in commerce of the Accused Domain Names is and was  
18 likely to cause confusion, mistake, or to deceive.

19 96. Defendant's use in commerce of the Accused Websites and material  
20 displayed thereon is and was likely to cause confusion, mistake, or to deceive.

21 97. The above-described acts of Defendant constitute trademark infringement  
22 in violation of 15 U.S.C. § 1114(1), entitling Plaintiff to relief.

23 98. Defendant has unfairly profited from the infringing acts alleged, in an  
24 amount to be determined at trial.  
25

1           99. By reason of Defendant's acts, Plaintiff has suffered damage to the  
2 goodwill associated with Plaintiff's AUTOENGINEUITY Marks.

3           100. Defendant's activities have irreparably harmed and, if not enjoined, will  
4 continue to irreparably harm, Plaintiff and Plaintiff's federally registered  
5 AUTOENGINEUITY Marks.

6           101. Defendant's activities have irreparably harmed, and if not enjoined, will  
7 continue to irreparably harm the general public, who has an interest in being free from  
8 confusion, mistake, and deception.

9           102. By reason of Defendant's acts, Plaintiff's remedy at law is not adequate to  
10 compensate Plaintiff for the injuries inflicted by Defendant. Accordingly, Plaintiff is  
11 entitled to preliminary and permanent injunctive relief against Defendant pursuant to 15  
12 U.S.C. § 1116.

13           103. By reason of Defendant's willful acts, Plaintiff is entitled to damages, and  
14 that those damages be trebled under 15 U.S.C. § 1117.

15           104. This is an exceptional case, making Plaintiff eligible for an award of  
16 attorneys' fees under 15 U.S.C. § 1117.

17           105. The infringement by the Defendant has been willful and deliberate,  
18 designed specifically to trade upon the enormous goodwill associated with Plaintiff's  
19 trademark.

20           106. Defendants' infringement will continue unless enjoined by this court.

21  
22                           **SECOND CLAIM FOR RELIEF**

23                           **(False Designation of Origin Under 15 U.S.C. § 1125(a))**

24           107. Plaintiff incorporates by reference all averments set forth in the  
25 paragraphs above as if fully rewritten herein.

1           108. Defendant's use in commerce of Plaintiff's AUTOENGINEUITY Marks  
2 and variations thereof, the Accused Domain Names, and the Accused Websites is likely  
3 to cause confusion, or to cause mistake, or to deceive the relevant public that the  
4 Accused Domain Names, the Accused Websites, the materials displayed thereon, and  
5 the products sold thereon, are authorized, sponsored, or approved by, or are affiliated  
6 with, Plaintiff.

7           109. Defendant's use of Plaintiff's AUTOENGINEUITY Marks and variations  
8 thereof and the Accused Domain Names and Accused Websites is likely to cause  
9 confusion among the general public.

10           110. The above-described acts of the Defendant constitute trademark  
11 infringement of Plaintiff's AUTOENGINEUITY Marks and false designation of origin in  
12 violation of 15 U.S.C. § 1125(a), entitling Plaintiff to relief.

13           111. Defendant has unfairly profited from the actions alleged in an amount to  
14 be determined at trial.

15           112. By reason of Defendant's acts alleged herein, Plaintiff has suffered  
16 damage to the goodwill associated with Plaintiff's AUTOENGINEUITY Marks.

17           113. Defendant's activities have irreparably harmed and, if not enjoined, will  
18 continue to irreparably harm Plaintiff and Plaintiff's AUTOENGINEUITY Marks.

19           114. Defendant's activities have irreparably harmed and, if not enjoined, will  
20 continue to irreparably harm the general public, which has an interest in being free from  
21 confusion, mistake and deception.

22           115. By reason of Defendant's acts alleged herein, Plaintiff's remedy at law is  
23 not adequate to compensate Plaintiff for the injuries inflicted by Defendant.  
24  
25

1 Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief against  
2 Defendant pursuant to 15 U.S.C. § 1116.

3 116. By reason of Defendant's willful acts, Plaintiff is entitled to damages, and  
4 that those damages be trebled, under 15 U.S.C. § 1117.

5 117. This is an exceptional case, making Plaintiff eligible for an award of  
6 attorneys' fees under 15 U.S.C. § 1117.

7 118. Defendants' use of the Accused Domain Names and Accused Websites  
8 constitutes a false designation of origin which is likely to deceive and has deceived  
9 customers and prospective customers into believing that Defendant's goods and services  
10 are those of the Plaintiff, and, as a consequence, are likely to divert and have diverted  
11 customers away from the Plaintiff.

12 119. Plaintiff has no control over the nature and quality of the goods provided  
13 and services rendered by Defendants. Any failure, neglect or default by Defendants in  
14 providing such goods and services will reflect adversely on Plaintiff as the believed  
15 source of origin thereof, hampering efforts by Plaintiff to continue to protect its  
16 outstanding reputation for high quality goods and services, resulting in loss of sales  
17 thereof and the considerable expenditures to promote its goods and services under the  
18 AUTOENGINEITY Marks, all to the irreparable harm of the Plaintiff.

19 120. Defendants' false designation of origin will continue unless enjoined by  
20 this court.

21  
22 **THIRD CLAIM FOR RELIEF**

23 **(Cybersquatting Under 15 U.S.C. § 1125(d))**

24 121. Plaintiff incorporates by reference all averments set forth in the  
25 paragraphs above as if fully rewritten herein.

1           122. Defendant's registered, trafficked or used the Accused Domain Names  
2 and Accused Websites with a bad-faith intent to profit from Plaintiff's  
3 AUTOENGINEUITY Marks.

4           123. Defendant is and was the registrant of the Accused Domain Names  
5 autoengineuity.net and autoengineuityscantool.com.

6           124. The Accused Domain Names are identical or confusingly similar to  
7 Plaintiff's AUTOENGINEUITY Marks.

8           125. Plaintiff's AUTOENGINEUITY Marks are distinctive, and Plaintiff's  
9 AUTOENGINEUITY mark was registered at the United States Patent and Trademark  
10 Office at the time Defendant registered, trafficked in, or used the Accused Domain  
11 Names.

12           126. Defendant does not have any intellectual property rights or any other  
13 rights in Plaintiff's AUTOENGINEUITY Marks.

14           127. None of the Accused Domain Names consist of the legal name of the  
15 Defendant, or a name that is otherwise commonly used to identify the Defendant.

16           128. Defendant has not made any prior use of any of the Accused Domain  
17 Names in connection with the bona fide offering of any goods or services.

18           129. Defendant has not made any bona fide fair use of Plaintiff's  
19 AUTOENGINEUITY Marks on a website accessible under any of the Accused Domain  
20 Names.

21           130. Defendant registered, used, and is using the Accused Domain Names to  
22 divert consumers from Plaintiff's website, [www.autoengineuity.com](http://www.autoengineuity.com), to the Accused  
23 Websites accessible under the Accused Domain Names [www.autoengineuity.net](http://www.autoengineuity.net) and  
24 [www.autoengineuityscantool.com](http://www.autoengineuityscantool.com) for Defendant's commercial gain by creating a  
25

1 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the  
2 Accused Websites and Defendant's Websites and the products sold thereon or thereby.

3       131. Defendant provided material and false and misleading contact information  
4 by falsifying return address information on products shipped by Defendant in response  
5 to inquiries to websites accessed using the Accused Domain Names, with the express  
6 purpose that its customers would be confused into believing that they were dealing with  
7 AutoEnginuity rather than Defendant.

8       132. Defendant has registered or acquired multiple domain names, the Accused  
9 Domain Names, that Defendant knew were identical or confusingly similar to marks of  
10 others, including the AUTOENGINUITY Marks, that were distinctive when the domain  
11 names were registered.

12       133. Defendant's registration, use, or trafficking in the Accused Domain  
13 Names constitutes cybersquatting in violation of 15 U.S.C. § 1125(d), entitling Plaintiff  
14 to relief.

15       134. By reason of Defendant's acts alleged herein, Plaintiff's remedy at law is  
16 not adequate to compensate Plaintiff for the injuries inflicted by Defendant.  
17 Accordingly, Plaintiff is entitled to preliminary and permanent injunctive relief pursuant  
18 to 15 U.S.C. § 1116.

19       135. By reason of Defendant's acts alleged herein, Plaintiff is entitled to  
20 recover Defendant's profits, actual damages, and the costs of the action, or statutory  
21 damages under 15 U.S.C. § 1117, on election by Plaintiff, in an amount of one hundred  
22 thousand dollars (\$100,000.00) for each domain name found to constitute  
23 cybersquatting.  
24  
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1           136. This is an exceptional case, making Plaintiff eligible for an award of  
2 attorneys' fees under 15 U.S.C. § 1117.

3  
4                                   **DEMAND FOR JUDGMENT**

5           WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 6           1. That a preliminary injunction be entered, enjoining Defendant, its agents,  
7 representatives, employees, assigns and suppliers, and all persons acting in concert or  
8 privity with Defendant, from engaging in the following activities:
- 9                           a. Registering, trafficking in, and using, in any manner, the Accused  
10 Domain Names, or any other domain names that are counterfeits of,  
11 confusingly similar to, or likely to dilute Plaintiff's  
12 AUTOENGINEUTY Marks or any other marks owned by Plaintiff;
- 13                           b. Transferring, releasing, deleting, and assigning the Accused Domain  
14 Names or any other domain names that are counterfeits of, confusingly  
15 similar to, or likely to dilute Plaintiff's AUTOENGINEUTY Marks or  
16 any other marks owned by Plaintiffs, to anyone other than Plaintiff;
- 17                           c. Using any of Plaintiff's AUTOENGINEUTY Marks or any other  
18 name, mark, designation or depiction in a manner that is likely to  
19 cause confusion regarding whether Defendant is affiliated or  
20 associated with or sponsored by Plaintiff, or that is likely to dilute the  
21 distinctiveness of Plaintiff's AUTOENGINEUTY Marks or any other  
22 marks owned by Plaintiff;
- 23                           d. Engaging in trademark infringement, trademark dilution,  
24 counterfeiting, unfair competition, false advertising, false designation  
25

1 of origin, and passing off against Plaintiff, or misappropriation of  
2 Plaintiff's trademark rights;

3 e. Assisting, aiding, or abetting any other person or business entity in  
4 engaging in or performing any of the activities referred to in  
5 subparagraphs (a) through (d) above.

6  
7 2. That Wild West Domains, as the registrar for the Infringing Domain Names,  
8 "lock" the Infringing Domain Names currently owned by Defendant to  
9 prevent their transfer or deletion by Defendant, and deposit with the Court  
10 documents sufficient to establish the Court's control and authority regarding  
11 the disposition of the registrations and the use of the domain names pending  
12 the outcome in this case, and remove such domain names from its zone files  
13 so that the domain names no longer resolve to active websites.

14 3. That the Court enter a final judgment that Defendant has:

- 15 a. Violated plaintiff's rights in Plaintiff's AUTOENGINEUTY Marks in  
16 violation of 15 U.S.C. § 1125(d);  
17  
18 b. Violated Plaintiff's rights in Plaintiff's AUTOENGINEUTY Marks in  
19 violation of 15 U.S.C. § 1114(1); and  
20  
21 c. Violated Plaintiff's rights in Plaintiff's AUTOENGINEUTY Marks in  
22 violation of 15 U.S.C. § 1125(a).

23 4. That the Court enter a Final Judgment:

- 24 a. Permanently enjoining Defendant, its agents, representatives,  
25 employees, assigns and suppliers, and all persons acting in concert or  
privity with Defendant, from engaging in the activities described in  
Paragraph 1 (a)-(e) above;



- b. Ordering Defendant to transfer to Plaintiff the Accused Domain Names and every domain name they own or control, directly or indirectly, or that was registered at their direction, request, or instruction, that is identical, confusingly similar to, and/or likely to dilute the distinctiveness of Plaintiff's AUTOENGINEUTY Marks;
- c. Ordering Defendant to account to Plaintiff for, and disgorge, all profits it has derived by reason of the unlawful acts complained of above;
- d. Ordering Defendant to pay damages, and that those damages be trebled, under 15 U.S.C. § 1117;
- e. Ordering Defendant to pay statutory damages under 15 U.S.C. § 1117(d), on election by Plaintiff, in an amount of up to \$100,000 for each domain name found to constitute cybersquatting;
- f. Ordering Defendant to pay Plaintiff's reasonable attorneys' fees, prejudgment interest, and costs of this action under 15 U.S.C. § 1117;
- g. Ordering Defendant to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner and form in which Defendant has complied with the injunction and judgment within thirty (30) days after the service of the injunction and judgment upon Defendant;
- h. Ordering Defendant to pay punitive damages in an amount to be determined, based upon the foregoing acts of Defendant; and
- i. Granting Plaintiff such other relief as the Court may deem appropriate.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

SCHMEISER, OLSEN & WATTS LLP

By:

/Jeffrey W. Johnson/

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**VERIFICATION OF THE COMPLAINT**

I am the owner of AutoEnginuity, LLC. I have personal knowledge of the matters set forth in the Complaint, and I verify that I have read the foregoing Complaint and the allegations and statements therein. I further verify that the allegations and statements are true to the best of my knowledge, except as to those matters stated upon information and belief and, as to those, I believe them to be true.

DATED this 28 day of February, 2011.

  
Jay Horak